IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

WRIT PETITION NO. 2302 OF 2002

Indian Airlines Ltd., a company
registered under the Companies
Act, 1956 having its registered
office at Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi 110 001 and also
having inter alia a Regional Office
at New Engineering Complex,
Vile Parle (East) Mumbai 400 099. ... Petitioner

vs.

Prakash R. Parab ,
residing at Nerul,
Shirsawas Wadi,
Kudal, District – Sindhudurg,
Maharashtra State. . .. Respondent

Mr. S. M. Dixit with Mr. K. B. Swamy and M. S. Chhaya Shah for Petitioner.

Mr. P. A. Sawant for Respondent

CORAM: **F. I. REBELLO J.**

Date: 23/8/2005

ORAL JUDGMENT:

1. The Petitioner employee, by the present petition has challenged the Award Part I, dated 28th May 2002. By that award, the learned Central Government Industrial Tribunal has recorded a finding vide order dated 24.11.1994, holding that the enquiry against the workman was vitiated, and consequently giving an opportunity to the employer to prove the charge of misconduct at an independent enquiry before the Tribunal.

2. A few facts may now be noted. The Respondent workman joined the services of the Petitioner company as an Engineering Helper on 11.3.1979. On 29.4.02 the Respondent was assigned to duties at Goa flight and Calcutta flight for pushing the baggage containers. On 10.5.92 the Respondent was arrested by the police, pursuant to the complaint received from one Mr. S. M. Jariwala a passenger on the flight operated by Petitioner company, for committing theft of an amount of Rs.25,000/- from his baggage. Pursuant to that a chargesheet

was served on the Respondent which is dated 18/26.8.92. The chargesheet was received by the Petitioner on 21st September 1992. An Enquiry Officer was appointed who commenced the enquiry on 13.4.93. In the course of the enquiry the Enquiry Officer put a question to Respondent as to whether he had understood the contents of the chargesheet. In answer to the query the workman stated that he has read and understood the contents of the chargesheet. When he was asked whether the same needs to be explained to him, the answer recorded was that it was not necessary. The workman pleaded not guilty of the misconduct alleged. On 18.5.93 the Respondent raised an objection that the chargesheet was not signed by the competent authority. After following due procedure, including issuing the show cause notice to the Respondent by order dated 24.11.94 the Competent Authority of the Petitioner company imposed the punishment of dismissal on the Respondent having been found guilty of the charges levied against him. An application was simultaneously moved under section 33 (2) (b) of the Industrial Disputes Act 1947 before the National Industrial Tribunal seeking approval of the action taken. The approval

was granted on 9th May 1999 holding that the action taken by the Petitioner company in dismissing the Respondent was proper. Dispute then were taken in conciliation. A reference was made to the National Tribunal in the matter of the industrial dispute, of dismissal. A preliminary issue was framed as to the validity of the enquiry. The Learned Tribunal by its order dated 28th May 2002 was pleased to hold, as stated earlier, that the enquiry conducted was not fair and proper and is vitiated and accordingly directed the Petitioner to lead evidence de novo before it.

3. At the hearing of this petition on behalf of the Petitioner the learned counsel has urged the following two issues:

(a) Whether the issuance of the chargesheet, without being signed, vitiates the disciplinary proceedings?

(b) Whether the learned Tribunal could have proceeded to consider that the evidence of MW 5 Darshan, even though the said witness was not available for cross examination.

On behalf of the Respondent learned counsel contends that

once the chargesheet is not signed by the competent officer all proceedings based on the said chargesheet are a nullity at law and consequently the learned Tribunal was right in so holding. It is further submitted that the learned Tribunal has made a reference to the evidence recorded of MW 5 which can be clearly seen from the findings of the Enquiry Officer and as such also the learned Tribunal was right in setting aside the enquiry on that ground.

It may be mentioned that the same Tribunal had earlier adjudicated the application by the Petitioner for approval of the action in imposing the punishment of dismissal against the Respondent. The very contention now raised viz., that the chargesheet was not signed and consequently the enquiry was vitiated was also an issue before the learned Tribunal. The learned Tribunal by its order dated 11th May 1999 after considering the contention in para 5 of the order came to the conclusion that it could not be said that the chargesheet is bad on account of failure by the competent officer to sign the same. The question therefore will arise as to whether in proceedings between the same parties, before a competent forum, where

the very same question was in issue and has been answered against the Respondent, was it be open to the Respondent workman once again to raise the same issue and in the alternative was it open to the Industrial Tribunal, once having answered that issue against the Respondent workman , in the pending reference to hold that the enquiry held was not fair and proper. In such circumstances would Respondent workman be barred by the principle of issue estoppal in once again raising such contention and the like manner the Tribunal be barred from answering the very same issue once again.

4. Considering the above and the contention raised on behalf of the parties the following issues will have to be answered:

(a) Merely because the Competent Authority who has issued the chargesheet had not signed the chargesheet do all subsequent proceedings and or all proceedings based on the said chargesheet become null and void?

(b) One the issue of the chargesheet not being signed was an issue before a competent forum, between the same parties and the same having been answered, was it

open either to Respondent to raise the issue or to Tribunal to answer the said issue once again or would by the principle of issue estoppel bar the workman from raising the said issue and the Tribunal in answering it afresh?

(c) Can it be said that the findings recorded at the said enquiry are perverse inasmuch as the Enquiry Officer has relied on the evidence of PW 5 who was not available for cross examination and on this count also the finding of the Industrial Tribunal that the findings are not perverse has to be set aside?

5. We may first address ourselves to the issue of non-signing of the chargesheet. Before answering the same certain material on record may be considered. There is no dispute that the company had filed an application before the National Industrial Tribunal, being Approval Application No. NTB-68 of 1994. One of the points raised was the issuance of the chargesheet. The facts that have come on record are as under. A chargesheet was served on the Respondent. Admittedly the chargesheet was not signed. The Respondent acknowledged the receipt of the chargesheet by signing the office copy. At

the enquiry, the Enquiry Officer has specifically put a question to the Respondent – workman as to whether he had understood the contents of the chargesheet and required further explanation? The workman answered the same by stating that he had understood it. The workman thereafter participated in the enquiry and led his evidence. The learned Tribunal in the impugned Part I award considered the contention urged on behalf of the Petitioner herein that no prejudice has been occasioned by non- signing of the chargesheet. That contention was rejected by holding that a chargesheet issued without a signature cannot be deemed to have been legally issued and consequently the test of prejudice would not be applicable. It may also be mentioned that a report of the Enquiry Officer was made available to the Respondent who was issued a show cause notice. The workman filed his reply to the same and based on that the order dated 24.11.1994 was passed by imposing the punishment on the Respondent.

The purpose and purport of issuing a chargesheet is to enable the delinquent workman to know the charges levelled against

him and also to find out whether those charges are misconduct in terms of his service conditions or the standing orders applicable to the workman. This is because the law as it stands is that the workman cannot be chargesheeted for misconduct which is not defined as such, save and except that as explained by the Apex Court (See **B. C. Chaturvedi v/s. Union of India**, 1995 (6) SCC 747). However, the law as set out in **A. L. Karla vs. Projects Equipments Corporation of India Ltd.,** (1984) 3 SCC 316 continues to hold the field. The workman before an enquiry is initiated must know of the alleged act of misconduct either in terms of the contractual terms of service, or the standing orders, whichever may be applicable. The intent and purpose of a chargesheet is that the workman has an opportunity of defending himself against the charges levelled against him. The chargesheet therefore is only to make known to the workman the charges which the employer proposes to prove against the workman in the domestic enquiry. Issuance of a chargesheet is not a penalty. It is but a procedural step in the course of a domestic enquiry. Therefore, mere non- signing of the chargesheet by itself cannot ipso fact be held to vitiate the entire enquiry, if on

evidence it is established that the workman was aware of the charges, an enquiry was held, evidence was led, workman participated in the enquiry and the Enquiry Officer based on the evidence led has recorded his findings. Issuance of the chargesheet is material before commencement of the enquiry. If no chargesheet is served then the enquiry would be vitiated as that enquiry can be set aside on the ground that it was without communicating to the workman what he was supposed to defend . We are not in such a case. We are in a case of a defect in communicating the chargesheet, without the signature of the authority issuing the chargesheet. It is not the contention of the workman that the authority who issued the chargesheet though not signed it, was not competent authority to issue the chargesheet. It is also not the contention that the competent officer who passed the order of penalty based on the findings recorded in which the workman participated was not the authority competent to impose the punishment. Therefore, mere non- singing of the chargesheet, cannot result in holding that the entire enquiry stands vitiated. Chargesheet is in the nature of a notice to a party. In the context of a domestic enquiry, it is a procedural step.

Whenever notice is a procedural step and there is no statute making it mandatory, the test of prejudice would be the test to find out whether the enquiry held is vitiated. It is only then, in the event the workman can establish that because of the non-signing of the chargesheet, prejudice has been occasioned to him would this court interfere. That is not the case here. A learned Division Bench of the Karnataka High Court, S. Nagiah v/s. Indian Aluminium Co., Limited, was dealing with the issue as to what are the consequences of a defective charge memo. In that case, the contention urged was that the charge memos had not been issued by the competent authority in terms of the standing order applicable. The learned Division Bench after considering the judgment of the Apex Court posed the following question:

Whether the issue of a memorandum of chargesheet by an authority other than the competent authority and on which the Disciplinary Enquiry was initiated, if assuming to be bad, would vitiate the enquiry?

After considering several judgments and the judgment in **Bata India Ltd. Vs. M.C. Bhardwaj & Anr.,** [1986 (II) Labour Law Notes 630] held that looking at the matter from a

proper perspective, the question required is whether the workman has suffered any prejudice. The purpose of the chargesheet itself is to indicate and intimate to the chargesheeted workman as to the charges in respect of which the enquiry is held. Mere non- signing of the chargesheet would be of no consequence as long as the authority competent to initiate the enquiry has initiated the enquiry. The workman was given an opportunity to lead evidence as also an opportunity to have his say as to why the punishment imposed should not be imposed. It is in these circumstances that the proper test which has to be applied is to see whether any prejudice is caused to the workman by the non- signing of the chargesheet. The learned Tribunal has proceeded on the footing that as the memorandum of chargesheet is not signed the entire enquiry proceeding is vitiated. In my opinion, the order of the Tribunal discloses an error of law apparent on the face of the record.

Apart from that it may be pointed out that considering the facts on record nothing has been pointed out to this court even at this stage that non-signing of the chargesheet has resulted in

any prejudice to the workman. On this point when the Enquiry Officer asked Respondent – workman as to whether the charges should be explained to him, his answer was that he has understood the charges and that there was no need to explain the same. To my mind therefore the finding of the Tribunal that the enquiry is vitiated has to be set aside.

6. We then come to the second issue as to whether the Industrial Tribunal could have once again decided the issue as to whether failure to sign the chargesheet vitiated the enquiry, when the very same issue was before the very same Tribunal in proceedings under section 33 2(b) between the same parties. In other words as the proceedings were between the same parties and the issue was the very same issue. It cannot be contended, nor has it been contended that findings on the fairness of an enquiry in proceedings for approval are summary in nature and the findings recorded cannot be considered when the matter comes up by way of a reference. When we say this we must consider the tests to be applied while granting permission. In so far as the fairness of the enquiry is concerned the test would be the same in both a

reference under section 10 and an application under section 33(2)(b). Whilst granting permission in an application under section 33(2)(b) the court must examine whether the enquiry is fair. (*See* **Punjab National Bank vs. Their Workmen** [1959] 2 LLJ 666. *See also M/s.* **Bharat Iron Works vs. Bhagubhai Balubhaiu Patel and ors.** 1976 Lab. I.C. 4.). In the instant case, as may be noted from the order of the National Industrial Tribunal, in the approval application the very same question was formulated in para 5. The learned Tribunal, in my opinion, correctly applied the test , whether the workman had suffered any prejudice. After considering the various dates of the chargesheet, the copy of the chargesheet, the questions addressed to the workman at the inquiry and to the other material, the learned Tribunal came to the conclusion that the enquiry is not vitiated. In my opinion, therefore, the issue of fairness of the enquiry which arose in the reference was also in issue before the National Tribunal in the application under section 33(2)(b). The law as settled is that an enquiry if not conducted in compliance with the provisions of the standing orders and other rules applicable and in violation of the principles of natural justice and fair play, the enquiry would

stand vitiated. Therefore , the National Tribunal while considering the application for approval has to apply the same test which the National Tribunal has to consider on a reference made to it and while answering the pending issue, whether the enquiry conducted was fair and proper. That being the case it can safely be said that it was not open or within the jurisdiction of the Tribunal to once again answer the same issue as it would be bound by the principle of issue estoppel. The principle of estoppel would require that the party against whom the issue is answered by a competent forum would be estopped in raising the same issue which was raised in the earlier proceedings between the same parties and dealing with the same issue. The second contention therefore also will have to be held in favour of the Petitioner by holding that it was not within the jurisdiction of the Industrial Tribunal to once again answer the very same issue.

7. That leads us to the last issue as to whether the Tribunal was right in setting aside the domestic enquiry on the ground that the Enquiry Officer had considered the evidence of MW 5 Darshan Lal. The Enquiry Report forms part of the record of this petition. The report is divided under several heads, one of

which is summary of evidence. In this summary of evidence in para 22 the Enquiry Officer has referred to the evidence of MW 5 Darshan Lal. It is also not disputed that MW 5 who was examined by the Management was not available for cross examination by the workman. If on the basis of that evidence the Enquiry Officer had considered the evidence of a witness who was not available for cross examination, then Respondent – workman would be right in contending that enquiry based on consideration of such evidence would be vitiated. As pointed out earlier after having set out the evidence of the employer and the workman, the Enquiry Officer under the head of analysis of evidence, has examined the evidence. In this part of the evidence there is absolutely no reference to the evidence of MW 5. On the contrary in para 40 of the report the Enquiry Officer holds that, based on the evidence of MW 1, MW 2, MW3 and MW 6 it is overwhelmingly well established that the complaint of the passenger in the matter of missing of Rs.25000/- is established and that the said evidence is against the delinquent workman, the Respondent herein. Thereafter, after considering the other evidence the Enquiry Officer has recorded a finding that

the Respondent was guilty of misconduct, which was alleged against him. It is therefore clear that while considering the evidence for the purposes of holding as to whether the misconduct alleged is proved or otherwise, the Enquiry Officer did not at all rely upon the evidence of MW 5. The learned Tribunal proceeded on the footing, as can be seen from para 8 of part I award that the Enquiry Officer has considered the evidence of MW 5, even though the workman was not given the opportunity of cross examining the said witness. This is a total misreading of the report of the Enquiry Officer. In my opinion, again the order of the Industrial Tribunal suffers from an error apparent on record inasmuch as that finding is based on no material and consequently perverse. A finding based on no material suffers from error of law apparent on the face of the record. The impugned order on that count also is liable to be set aside.

8. Having answered the contentions raised in favour of the Petitioner the petition will have to be allowed and the award Part I dated 28th May 2002 will have to be set aside. The matter is remanded back to the Tribunal for answering the

issue as to quantum of punishment. Rule made absolute accordingly, with no order as to costs.

(F. I. Rebello J.)